IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL SIDE JURISDICTION

Writ Petition (L)No.1379 of 2007

Bhagwant Kaur Sandhu and ors — Petitioners.

Vs

Laxmi Education Society and ors — ..Respondents

with

Writ Petition (L) No.1569 of 2007

Laxmi Education Society and anr — ..petitioners

vs

State of Maharashtra and ors — ..respondents

with

PIL Writ Petition No.55 of 2007

Sarvadanand Shukla — ..petitioner

vs

Laxmi Education Society and anr — ..respondents

Mr S.D.Dhige for petitioners in W.P. 1379 of 2007

Mr. R.A. Dada, Senior Advocate with Mr. M.P.S. Rao for M/s Nanu Hormusjee and Co for petitioners in W.P.No.1569 of 2007 and for the college in PIL No.55 of 2007

Mr. A.A. Kumkbakoni Associate Advocate General with Mr. M.D.Naik AGP for State.

Mr. Manoj Singh for Mr.D.Dwivedi for petitioners in PIL No. 55 of 2007

Mr Mohan Pillai for applicants (proposed interveners) in PIL No. 55 of 2007

CORAM: SWATANTER KUMAR, C.J., &
Dr.D.Y.CHANDRACHUD, J.

Judgment reserved on: 18th Sept 2007

Judgment delivered on 20th Sept 2007

JUDGMENT :(PER SWATANTER KUMAR, C.J.)

By this judgment we will dispose of the above two writ petitions being Writ Petition (Lodging) Nos. 1379 and 1569 of 2007 Public Interest Litigation No.55 of 2007.

1. The teachers of Sheth L U Jhaveri and Sir M.V. College of Arts, Science and Commerce and Sir Chinai College of Commerce and Economics approached this Court under Article 226 of the Constitution of India in Writ Petition No.1379 of 2007 praying that the closure notice dated 13th June 2007 (Exhibit A to the petition) issued by the management of the colleges be quashed and set aside and the management be directed to admit requisite number of students for Academic Year 2007-2008 onwards. It was further prayed that the respondents be directed to comply with the directions contained in the letter dated 27th June 2007 issued by the Deputy Director of Education, State of Maharashtra. Lastly they prayed for a direction for appointment of an independent managing committee to manage the affairs of both these colleges.

2. Writ Petition (Lodging) No. 1379 of 2007 was filed on 2nd July 2007. During the pendency of the said petition, another petition being Writ Petition (Lodging) No. 1569 of 2007 was filed on 23rd July 2007 by the Laxmi Education Society Trust which is looking after the affairs of both the colleges seeking a declaration that the closure notice issued by the management was legal and proper, the show cause notice dated 13th July 2007 (Exhibit K to the petition) issued by Director of the Education proposing to appoint an administrator was illegal, unjustified and they prayed for quashing of the same and for issuance of consequential directions. However, during the pendency of the above petitions, an order was made on 25th July 2007, vide which an administrator was appointed. The petitioners in the above petition prayed for setting aside and quashing the said order on the ground that the same is illegal and unjustified being violative of the principles of natural justice.

3. Still another public interest litigation, being PIL No. 55 of 2007, was filed on 4th July 2007 by one Sarvadanand Shukla praying for appropriate writ or order directing respondent No.1 to hold education activities and give admissions to the students for full academic course and to remove all the notices put up on the notice board of the

colleges. Each of these writ petitions was contested by the respective parties by filing their replies.

4. As far as the show cause notice dated 13th July 2007 and the order dated 25th July 2007 are concerned, the principal argument was that the order was passed without hearing the management of the colleges and without providing them any reasonable opportunity to put forth their case in reply to the show cause notice. At the very outset it was conceded on behalf of the State that they would not press the implementation of the order dated 25th July 2007 and in fact same would not be given effect to. However, they would reserve their right to issue fresh show cause notice and/or pass appropriate orders on the basis of the same show cause notice, but after granting opportunity of hearing to the management of the colleges in accordance with the principles of natural of justice. As such the principal relief claimed in Writ Petition No.1569 of 2007 in fact stands granted to the petitioners.

5. As regards the other claim which is common to the two petitions relating to the notice given by the managements for closure of the colleges in accordance with the relevant Rules, it is a conceded position that under the rules only one academic year notice is

contemplated whereas the management has given two years notice of closure. According to the management, their step towards the closure is bona fide and is for valid reasons and the Government has no jurisdiction to go into this question as the management has an absolute right to close the Colleges. On the other hand, it is contended on behalf of the State, while relying upon Rules 25A and 26 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, that the Government has jurisdiction to examine the merits or otherwise of the closure notice and it must fall within the scope of these statutory provisions. Further, while relying upon proviso to clause 7.5 of the Secondary Schools Code, 2002, it is contended that no absolute right is vested in the management to close the school which is recognized without giving the requisite notice to the Regional Deputy Director of Education who shall take a decision and act thereupon. Such decision of this authority is appealable to the Director of Education in accordance with these provisions. The very scheme of these statutory provisions contemplates due application of mind by the Government/Appropriate authority.

6. The above are the controversies which arise in the case in hand. To

examine the merits or otherwise of these contentions would certainly amount to pre-judging the issues which are to be decided by the competent forum and/or by the State Government in exercise of its statutory powers. The ambit and scope of that power is stated in these provisions and have also been enunciated by a Division Bench of this court in the case of *Pujya Sane Guruji Vidya Prasarak Mandal and others* vs. *Prakash M. Patil and another,* 2002 (1) All MR 766. Some observations were also made by a Division Bench of this Court in the case of *Umesh Ambadas Shirapuri and others* vs. *The State of Maharashtra and others* (Writ Petition No. 6596 of 2004 decided on 23rd August, 2004) and a learned single Judge of this Court (Aurangabad Bench) in the case of *Mahatma Gandhi Taluka Shikshan Mandal, Chopda and another* vs. *Sambhaji A. Patil and another, etc.* 2004 (2) Mah. L.R. 854. On behalf of the State Government, serious contention has been raised while relying upon the language of Rule 25A and 26 that the management of the school has no unilateral discretion while taking a decision of retrenching and the prior approval of the Competent Authority is mandatory. The management of the College has a right to file an appeal before the Competent Authority. It is also contended that the issue of the teachers being declared surplus in the case of aided institutions is

one of the facets which the Government has a right to consider. These controversies can fairly be examined by the concerned authorities and no extraordinary circumstances have been brought to the notice of the Court which would justify judicial intervention at this stage and bypassing the statutory remedies available to the parties. In terms of Section 9 of the Act, an employee has a right to file an appeal before the Tribunal in case of dismissal, removal or whose services are otherwise terminated. In fact, as already noticed, the appeals have also been preferred by the affected parties. Therefore, the present writ petitions are not only premature but can hardly be even entertained by this Court in exercise of its extraordinary jurisdiction at this juncture. It is expected that all the parties would act expeditiously, keeping in view and squarely balancing the interest of the management, teachers and the students as well.

7. On the above premise it is contended on behalf of the State that the present petitions are premature and in fact tantamount to preventing the exercise of jurisdiction by the competent authority under the relevant Rules. There is no dispute before us that the management has served notice for closure and has duly notified the same in accordance with the Rules. It is unnecessary for us to pre-adjudicate any issue directly or indirectly affecting the merits of that notice. Government is exercising its powers in conformity with the provisions of the relevant Rules and are at liberty to pass appropriate order, which the petitioners obviously can challenge in accordance with law, if it is adverse to their interest. We also consider it unnecessary to comment on the scope of jurisdiction of the appropriate authority to examine the closure notice at this stage. It is for the specialised bodies to examine the matter in accordance with the Act/Rules and come to the just and fair conclusion. It may be noticed that these two colleges are aided institutions and as such receive aid from the Government.

8. As far as Writ Petition No. 1379 of 2007 is concerned the teachers have already been put to notice. They have challenged the action of the management before the College Tribunal. The question

raised before us including the bona fides of the management in issuing the closure notice and reliefs claimed by the teachers can safely be claimed by them before the College Tribunal and the Tribunal can examine their grievances. The Tribunal is constituted for determining such matters. As far as the closure notice is concerned, it is pending decision before the Government and the pleas raised by the teachers in that behalf can also be examined by the Tribunal. As such there is no occasion for this court to pre-empt the proceedings before the competent forum / authority particularly when it is nobody's case before us that the appropriate authority or forum has no jurisdiction at all.

9. As far as the question of admission of students is concerned we have already issued various orders and we must notice that the management of the colleges was fair in stating that they would grant admission to the students. The students were not vigilant even in complying with the orders of this court. They have not acted with expeditiousness and a sense of responsibility. Despite this vide our order dated 28th August 2007, we directed the Education Officer to be present at the premises of the colleges in face of the allegations/ counter allegations made in court by the respective parties. The Education Officer reported before us that the children who desired to

seek admission have been granted admission in the college. Still during the course of arguments another application was filed accompanied by different affidavits of the students who were wanting admission in the same college. There are number of applications which can be divided into two parts, one part where the students are already studying in other colleges and have made applications after the cut off date fixed by the court and the second part of the students who have not got admission anywhere and are interested in seeking admission to the college concerned.

10. In the peculiar facts and circumstances aforestated, we would dispose of these petitions with the following directions:

a) The Government would expeditiously take decision in accordance with law, upon the notice for closure submitted by the management of the colleges.

b) The teachers who have approached this court are entitled to pursue their applications before the College Tribunal and the Tribunal is free to decide their applications in accordance with law, without being influenced by any of the observations made

in this order.

c) The parties to the proceedings before the Tribunal are free to put forward their points of view for the consideration of the Tribunal and as permissible in law.

d) The students who have already been granted admission by the college by its own or under the orders of this court in the presence of the Education Officer shall be permitted to complete their academic course for two years i.e. 11th and 12th standards. The college will not in any way hamper the educational career or curtail the said period under any circumstances.

e) Out of 23 applications of the students filed before us, since seven students are already studying in other colleges, their request for admission to the colleges is declined and it will not be proper to transfer them from one college to another at this juncture particularly when first term has practically concluded. However, as regards the remaining sixteen students, who have not taken admission anywhere, the college is directed to

grant them admission forthwith and admit them to the current academic year of 11th standard. In the event the above students do not take admission by 5.P.M., on 21st September 2007. they shall be deemed to have waived the benefit of this order.

f) The above directions are obviously without prejudice to the rights and contentions of the parties, which are available to them before the respective authorities/tribunal and they are also free to take all the pleas that have been taken by them in the present petitions.

g) These writ petitions are disposed of with the above directions. However, we leave the parties to bear their own costs.

CHIEF JUSTICE

DR.D.Y. CHANDRACHUD, J.